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In the matter of Investigation by the)	
Department of Telecommunications and)	
Energy on its own Motion to Establish)	D.T.E. 06-8
Retail Billing and Termination)	
Practices for Telecommunication)	
Carriers)	
)	

Level 3 submits that the Department should carefully consider applicable FCC precedent in asserting jurisdiction in applying billing and termination standards to VoIP providers. The FCC has made it “clear that [the FCC], not the state commissions, has the responsibility and obligation to decide whether certain regulations apply to [VoIP]”. *In the Matter of Vonage Holdings Corporations Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, FCC 04-267, at para. 1 (Nov. 9, 2004) [hereinafter “*Vonage*”]. Although, the FCC in *Vonage* acknowledged that “states will continue to play their vital role in protecting

consumers from fraud, enforcing fair business practices, for example, in advertising and billing, and generally responding to consumer inquiries and complaints,” this was set in the context of state general laws governing businesses within those states. *Id.* While not offering an opinion on the impact of *Vonage* on the Department’s possible VoIP-related rulemaking, Level 3 considers the *Vonage* holding worthy of careful consideration.

III. The VoIP Service Provider and Underlying Network Service Provider Distinction

In the event that the Department determines it has jurisdiction to extend its rules to VoIP providers, then the Department should clarify that such rules apply to the VoIP service provider and do not extend to LECs that merely provide underlying wholesale network components and services to VoIP providers. Because of the nature of VoIP service, VoIP service providers often purchase certain underlying network components and services from third-party LECs. Level 3 is such a LEC. These underlying network components and services include transport, termination, OS/DA and E-911 connectivity. Although a portion of the retail end user’s call may transit the wholesale LEC’s network, there is no relationship between the LEC providing underlying network components and services and the retail VoIP customer. Accordingly, to avoid confusion, the Department should clarify, in any proposed rule, that billing and termination requirements do not extend to LECs that provide underlying network components and services.

IV. Conclusion

For the reasons set forth above, Level 3 requests that the Department clarify that any potential billing or termination rules apply only to providers directly serving retail customers and not to LECs that merely provide underlying network components and services.

**Respectfully Submitted by Level 3
Communications, LLC on the
6th Day of June, 2006:**

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